Filed 4/9/09 P. v. Salazar-Perez

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN SALAZAR-PEREZ,

Defendant and Appellant.

F054183

(Super. Ct. Nos. VCF181559, VCF177315 & VCF156773)

OPINION

APPEAL from a judgment of the Superior Court of Tulare County. Joseph A. Kalashian, Judge.

Kieran D. C. Manjarrez, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Lloyd G. Carter, Deputy Attorneys General, for Plaintiff and Respondent.

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In case No. 181559, a jury found appellant Juan Salazar-Perez guilty of driving under the influence causing injury (Veh. Code, § 23566, subd. (b); count 1), leaving the

scene of an accident and failing to provide assistance to a person injured in the accident, (Veh. Code, § 20001, subd. (a); count 2), and reckless driving with great bodily injury (Veh. Code, § 23105, subd. (b); count 3). With respect to count 1, the jury found that appellant personally inflicted great bodily injury on the victim (Pen. Code, § 12022.7, subd. (a)). In addition, appellant pled no contest to driving with a suspended license for a prior driving under the influence conviction (Veh. Code, § 14601.2, subd. (a); count 4) and providing false information to a police officer (Pen. Code, § 148.9, subd. (a); count 5). In a bifurcated proceeding, appellant admitted numerous prior conviction allegations associated with count 1, and pled no contest to driving under the influence in case No. 177315, which was pending during his trial in case No. 181559.[1] At sentencing, the trial court imposed the midterm of three years for count 1 in case No. 181559, plus three years for the section 12022.7 enhancement. The court also imposed a two-year term in case No. 177315, but failed in its oral pronouncement to specify whether that term was to run concurrently or consecutively with the six-year sentence imposed in case No. 181559. However, the minute order of sentencing indicated that the two-year term the court imposed was a concurrent term. The following day, the court adjusted appellant's sentence by striking the concurrent two-year term previously imposed and imposing a consecutive term of eight months in case No. 177315, thus resulting in a total prison term of six years eight months.

On appeal, appellant contends: (1) the prosecution failed to prove the corpus delicti of driving under the influence of alcohol because there was no independent proof he was intoxicated apart from his out-of-court admissions; (2) Judicial Council of California Criminal Jury Instructions (2207), CALCRIM No 359 (CALCRIM), the jury instruction on corpus delicti, misled the jury in violation of his due process rights because

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1 Although appellant purportedly appeals from the judgment in case No. 156773, this probation violation case was dismissed at the time of sentencing in the other two cases, and none of the issues appellant raises on appeal pertains to case No. 156773.

it failed to specify to which crime the instruction applied; (3) the prosecution failed to timely disclose material evidence in violation of his due process rights under *Brady v. Maryland* (1963) 373 U.S. 83; (4) the cumulative effect of the errors warrants reversal; and (5) the trial court was without jurisdiction to increase his sentence by eight months the day after his original sentence was imposed. We affirm.

FACTS [2]

On March 28, 2007, a car struck and seriously injured six-year-old Michael T. (the victim) on Addie Avenue in Tulare County. Two of three eyewitnesses identified appellant as the driver of the car that struck the victim and appellant admitted to his brother and the investigating highway patrol officer that he was the driver and that he was drunk at the time.

On March 28, 2007, David Garcia, was riding his bike on Addie Avenue, when he saw the victim walking across the street, trying to get a ball. Garcia saw a car "coming fast" towards him and the victim. Garcia yelled to the victim not to cross the street but the victim kept walking.

Garcia started waving his hands to try to stop the car or get it to slow down. When the driver saw him, he hit his brakes and the car slid to the right and struck the victim who had already crossed to the sidewalk. Garcia posited that the car started sliding because there was gravel on the road, explaining: "Being that the gravel and the way the road was, it just made his car go to the right." After the car hit the victim, the driver, an adult male, "went crazy and almost lost control and hit a van that parked in front of it." The car then "pealed out to leave." On cross-examination, Garcia confirmed that the car also hit a trashcan and some mailboxes. Although he acknowledged telling the

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2 In light of appellant's no contest plea and the nature of the issues he raises on appeal, we have omitted, as unnecessary, a recitation of the facts concerning case No. 177315, and have only provided a summary of the facts concerning case No. 181559.

investigating highway patrol officer that he saw the car "going side to side" before the accident, Garcia claimed at trial that the car did not start swerving until after it hit everything.

Another eyewitness, James Jones, testified he was driving his truck on Addie Avenue when he saw a car driving towards him "at a really high rate of speed … from where I saw a bunch of people coming out of a house." As Jones started to make a turn to reach his residence, he saw the car was "drifting" over towards his lane and reacted by steering his truck towards the side of the road. As he was doing this, Jones looked straight at the driver of the car. Asked to describe the driver's driving pattern, Jones testified: "Erratic. I mean, I don't know another word for it except for that: erratic. It was like he was in a hurry to get away from something, basically." Jones confirmed the vehicle was not holding a steady course of travel. Jones identified appellant in court as the driver of the car. He had also previously picked appellant's photograph out of a six-person photographic lineup following the accident.

The third eyewitness, Elizabeth Perez, testified she was heading east on Addie Avenue when she saw a "vehicle coming west and it was swerving to the sides, and it hit a little boy, a couple of mailboxes and a trash can also." When asked what she meant by "swerving," Perez testified, "It went from one side of the road to the other, and then it went back to its own road." Perez confirmed that she saw the car crossing over the center line.

Perez testified that the victim was standing on the sidewalk with a ball in his hand when he got hit by the car. Before the victim got hit, she saw a man on a bicycle waving the car down. According to Perez, when the man waved, the car did not slow down but kept to the same speed before it hit the victim. After hitting the victim and the other objects, the driver "floored it" and almost hit Perez. Perez had to pull to the side to avoid being hit and almost went into the field on the side of the road. Perez testified she remembered the driver's face, and identified appellant in court as the driver.

During cross-examination, Perez testified that the police showed her a photographic lineup. She pointed to one picture and told the officer he kind of looked like the driver but she was not sure if it was him because the driver had different hair.

Luis Martinez testified that he lived and worked on a ranch in Visalia, where appellant also worked. On the morning of March 29, 2007, Martinez saw appellant's damaged car and asked him what had happened to it. In response, appellant stated that he had hit another car. Martinez further testified that after March 28, 2007, he saw appellant ride a bicycle and did not see appellant drive his car.

Appellant's brother, Isidro Salazar, testified that appellant came to his house and told him he had been involved in an accident where he ran over or hit a male child. Appellant also said that he was drunk at the time of the accident. Salazar further testified that appellant was drunk when he came over to talk to him, and that appellant arrived at his house on a bicycle.

California Highway Patrol Officer Alexis Mantilla responded to the scene of the collision on March 28, 2007. Officer Mantilla found a license plate at the scene. He later placed a photograph of the last registered owner of the license plate (someone other than appellant) in a "six-pack" photographic lineup and showed it to Perez. Perez was unable to identify him as the driver and said none of them was the driver.

At some point, Officer Mantilla's investigation led to a ranch. There he located the suspect vehicle tucked away between some wooden shipping crates. The car had a broken grill and the top portion of the panel and the hood was torn. Martinez told the officer he had asked appellant what had happened to the vehicle, and that appellant had told him that he had collided with a garbage can.

Officer Mantilla made contact with appellant on April 4, 2007. He placed appellant in custody and read him his *Miranda* rights. Officer Mantilla spoke with appellant in Spanish because appellant told him it was the only language he spoke. Spanish was also Officer Mantilla's first language. After acknowledging and waiving his

rights, appellant gave a statement. Appellant initially gave "Martin Hernandez" as his name but later admitted his true name.

During the interview, which took place at the California Highway Patrol office in Visalia, Officer Mantilla asked appellant whether he had been driving any vehicles involved in the collision. Appellant denied owning any vehicles and indicated that he did not drive. After Officer Mantilla advised him of the witnesses and evidence he had against appellant, appellant finally admitted to driving the car during the collision. Appellant also admitted drinking four 24-ounce cans of Budweiser an hour prior to the collision. Appellant indicated he fled the scene because he knew he was going to be in trouble because he had been drinking.

Officer Mantilla also interviewed David Garcia near the scene of the collision and took notes of his statements. Garcia told the officer that before the vehicle struck the victim, "the vehicle was driving side to side" and appeared to be "out of control" and moving "at a high rate of speed."

Officer Mantilla further testified regarding his training and experience concerning DUI investigations. He acknowledged there was a certain driving pattern he looked for when investigating possibly impaired drivers. When asked what driving pattern might be indicative of impairment, Officer Mantilla testified, "Driving in a snake-like pattern, what's commonly known as weaving or straddling. For example, if you have a two-lane roadway, weaving, driving side to side, crossing the broken line or crossing over double yellow lines, driving in a serpentine manner." Officer Mantilla confirmed that if he saw someone driving like that, he would make a traffic stop.

DISCUSSION

I. Proof of Corpus Delicti of Crime of Driving Under the Influence

Appellant contends the prosecution failed to prove the corpus delicti of driving under the influence of alcohol. This is so because, in his view, "there was no independent proof of *intoxicated* driving apart from appellant's alleged statement to his

brother that he was drunk at the time of the accident." Relying heavily on David Garcia's trial testimony, appellant asserts that the evidence did not show a pattern of impaired driving before the accident but merely showed that he lost control of his vehicle after it hit some gravel. Thus, appellant asserts the evidence "gave rise to no inference as to a cause over and beyond the banking of the road and the presence of gravel." We reject appellant's contention and conclude the circumstantial evidence permitted a reasonable inference that appellant was driving while under the influence for purposes of proving the corpus delicti of the crime.

"In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself [and] the prosecution cannot satisfy this burden by relying *exclusively* upon the extrajudicial statements, confessions, or admissions of the defendant." (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1168-1169.) The corpus delicti rule does not require *direct* evidence. "The independent proof may be circumstantial and need not be beyond a reasonable doubt, but is sufficient if it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible. [Citations.] There is no requirement of independent evidence 'of every physical act constituting an element of an offense,' so long as there is some slight or prima facie showing of injury, loss, or harm by a criminal agency." (*Id.* at p. 1171; see *People v. Jones* (1998) 17 Cal.4th 279, 301-302 ["we have described this quantum of evidence as 'slight' [citation] or 'minimal' [citation]. The People need make only a prima facie showing '"permitting the reasonable inference that a crime was committed."' [Citations.] The inference need not be 'the only, or even the most compelling, one [but need only be] a *reasonable* one'"].)

"The corpus delicti of the offense of driving under the influence consists of proof that the automobile was being driven by some person who was under the influence of alcohol." (*People v. Martinez* (2007) 156 Cal.App.4th 851, 855; *People v. Bowen* (1992) 11 Cal.App.4th 102, 106.)

Evidence of impaired driving by appellant immediately before and after he struck the victim permitted a reasonable inference that he was driving while intoxicated. All three eyewitnesses described driving behaviors that Officer Mantilla testified were indicative of impairment by intoxication (e.g., drifting, swerving, moving side to side, crossing over the center line, etc.). In addition, two of the eyewitnesses described how appellant's unsteady driving caused them to take defensive action in their own driving. We further find a reasonable inference of intoxication could be drawn from the circumstances of the accident itself. Despite Garcia's testimony that appellant did not begin to swerve until after he hit his brakes and began to slide on the gravel, there was also evidence indicating that appellant did not apply his brakes or slow down when he saw Garcia but continued to drive at the same speed before swerving and hitting the six-year-old victim, *who had already safely crossed the road and was standing on the sidewalk*. Appellant then proceeded to collide with a number of stationary objects before accelerating and regaining the roadway, causing Elizabeth Perez to swerve to avoid hitting him. Notwithstanding appellant's assertions to the contrary, the circumstantial evidence supported a reasonable inference that appellant was intoxicated. Thus, the corpus delicti of driving under the influence was sufficiently established apart from appellant's admissions that he was drunk at the time of the accident.

We have reviewed and find inapposite the authorities appellant cites to support his contention that the prosecution failed to prove the corpus delicti of driving under the influence. (See *People v. Nelson* (1983) 140 Cal.App.3d Supp. 1; *People v. Moreno* (1987) 188 Cal.App.3d 1179; *People v. Scott* (1999) 76 Cal.App.4th 411.) As appellant recognizes, the issue in those cases was the identity of the driver; evidence of intoxication was not in dispute. We also find no support for appellant's suggestion that the prosecution was required to prove a "pre-existing driving pattern that was consistent with inebriation" before the accident occurred or for his bald assertion that "[d]ifficulty in controlling a moving vehicle after a collision no way implies intoxication." Even

assuming no witnesses observed appellant's driving pattern before the accident, which was not the case here, appellant offers no compelling reason why signs of impairment during and immediately following an accident may not be considered as circumstances supporting an inference of intoxication for purposes of satisfying the corpus delicti rule. Finally, we find no merit in appellant's contention that Officer Mantilla's unchallenged expert testimony was improper because it concerned general matters within common knowledge. We believe a California Highway Patrol Officer is uniquely qualified to testify regarding driving patterns indicative of driving under the influence. Each of the eyewitnesses described driving behaviors consistent with Officer Mantilla's testimony. Through their testimony and all the circumstances surrounding the accident, the prosecution made a sufficient showing that appellant was driving while intoxicated to prove the corpus delicti of the crime.

II. CALCRIM No. 359

Appellant contends CALCRIM No 359, the jury instruction regarding corpus delicti, violated his due process rights "because it failed to specify to the jury *which* charged crime it applied to." The court instructed the jury in relevant part as follows:

> "The defendant may not be convicted of any crime based on his out-of-court statements alone. You may rely on the defendant's out-of-court statements to convict him if you conclude that other evidence shows that the charged crime was committed. That other evidence may be slight and need only be enough to support a reasonable inference that *a crime* was committed." (Italics added.)

Appellant does not claim the instruction is an incorrect statement of the law. Rather, he seems essentially to be arguing that because more than one crime was charged in this case, the instruction misled the jury into believing it could rely on appellant's out-of-court statements to convict him of driving under the influence so long as it found sufficient independent proof *a crime* was committed; i.e., evidence any one of the charged crimes was committed. As a result, his federal due process claim is not based on

the instruction as written or the law upon which it is based, but on the likelihood that the jury misunderstood and misapplied the instruction to the facts of this case. Our charge is to determine whether there is a reasonable likelihood that the jury misunderstood and misapplied the instruction in a way that violates the Constitution. (*Estelle v. McGuire* (1991) 502 U.S. 62, 72 & fn. 4; *People v. Avena* (1996) 13 Cal.4th 394, 417.)

First, we agree with respondent that because the instruction was correct in law, it was appellant's responsibility to seek clarifying or limiting instructions. He did not do so. Having failed to request an instruction, he has waived his claim on appeal. (*People v. Guiuan* (1998) 18 Cal.4th 558, 570 ["'Generally, a party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language.'"]; *People v. Lang* (1989) 49 Cal.3d 991, 1024.)

Second, even if we found no waiver, the instruction as written was not likely to have misled the jury. It is well settled that the correctness of jury instructions is determined from the entire charge of the court and not from consideration of parts of the instruction or from a particular instruction. (*People v. Harrison* (2005) 35 Cal.4th 208, 252.) Although the language appellant isolates refers to *a* crime (as opposed to *the* crime), we do not believe a reasonable jury would interpret the instruction to mean it could convict appellant of one of the charged crimes (such as driving under the influence) based on appellant's out-of-court statements alone, so long as it found sufficient independent proof of any one of the other charged crimes. In rejecting a claim that CALCRIM No. 359 misstated the law of corpus delicti, the court in *People v. Reyes* (2007) 151 Cal.App.4th 1491, recently observed: "Under CALCRIM No. 359, a jury may not consider a defendant's out-of-court statement unless the jury concludes that 'other evidence shows that the charged crime … was committed.' A crime consists of specified elements; if evidence of any of the requisite elements is lacking, a defendant has not committed a crime. *There is no difference between an instruction that cautions*

that there must be evidence on each element of the charged crime and one that cautions that there must be evidence that a crime was committed." (*Reyes, supra,* at p. 1498; italics added.) Here as in *Reyes,* CALCRIM No. 359 accurately instructed the jury that it could not consider appellant's out-of-court statements unless it had already determined that there was evidence that *the charged crime* was committed, i.e., that there was evidence of each element of the crime. A reasonable jury would understand the instruction as a whole required independent proof with respect to each of the charged crimes. Thus, there was no danger that the jury would improperly rely on appellant's out-of-court statements alone to convict him of a charged crime without first finding sufficient independent evidence of that crime.

III. Brady Issue

Appellant contends the prosecution's failure to timely disclose evidence regarding Elizabeth Perez's identification of someone other than appellant from the first of two photographic lineups she was shown by Officer Mantilla violated his due process rights under *Brady v. Maryland, supra,* 373 U.S. 83, and his dismissal and new trial motions should have been granted on that basis. He further contends that Officer Mantilla's subsequent destruction of the first photographic lineup requires reversal of the judgment. We reject appellant's contentions.

Under *Brady v. Maryland, supra,* 373 U.S. 83, 87, the prosecution must not suppress "evidence favorable to an accused." A failure to disclose evidence, whether willful or inadvertent, violates due process if the evidence "is material either to guilt or to punishment." (*Ibid.*) Evidence is material only if there is "'a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" (*In re Williams* (1994) 7 Cal.4th 572, 611.) Evidence favorable to the accused includes both exculpatory evidence and impeachment evidence. (*Strickler v. Greene* (1999) 527 U.S. 263, 281-282.)

The disclosure obligation extends beyond the contents of the prosecutor's case file, and includes a duty to divulge any material exculpatory evidence which is known to those who act on the government's behalf. (*In re Brown* (1998) 17 Cal.4th 873, 879; *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 7-8.)

The "touchstone of materiality is a 'reasonable probability' of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.' [Citation.]" (*Kyles v. Whitley* (1995) 514 U.S. 419, 434.) In determining materiality, "[t]he reviewing court should assess the possibility that such effect might have occurred in light of the totality of the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response." (*United States v. Bagley* (1985) 473 U.S. 667, 683.)

Here, there is no dispute that the prosecution failed to timely disclose information concerning the first photographic lineup shown to Perez and that the defense was only aware of a second photographic lineup from which Perez was unable to make any identification. However, appellant has not demonstrated any prejudice as a result of the late disclosure. Appellant received the information during trial and it was presented to the jury. On cross-examination of Perez, appellant was able to show that Perez selected someone other than appellant from the first lineup she was shown by Officer Mantilla. The fact Perez selected someone other than appellant from the first photographic lineup was further underscored by the instruction regarding the late disclosure and destruction of evidence which the court gave at appellant's request. That instruction told the jury, *inter alia*, that the prosecution "failed to disclose the existence of a photographic lineup

favorable to the defendant where an eyewitness, Elizabeth Perez, picked a person other than the defendant as looking like the person in the case…." The jury was further instructed that "[b]ecause of nondisclosure and [destruction] of the evidence," it could "draw an adverse inference to the prosecution in the proof of the charges against the defendant." Appellant relied on the foregoing circumstances in closing argument to attack Officer Mantilla's credibility and to suggest that the officer might have employed improper, suggestive tactics to coerce a false confession from appellant. Thus, the record shows that although the disclosure of the evidence was after trial began, it was not so late that appellant could not effectively address it. "No denial of due process occurs if *Brady* material is disclosed to appellees in time for its effective use at trial." (*United States v. Higgs* (3d Cir. 1983) 713 F.2d 39, 44.)

Furthermore, appellant has not shown that the information belatedly discovered was material under *Brady*. Perez made it clear in her testimony that she could not make a positive identification of the driver; although she said she thought the person she picked out in the first lineup bore some resemblance to the driver of the subject vehicle, she noted his hair was different and she was unsure whether it was in fact the driver. However, Perez was certain that appellant was the driver when she saw him in person at trial. Moreover, James Jones independently and unequivocally identified appellant as the driver, and thus his testimony corroborated Perez on the matter. The witnesses' identifications of appellant as the driver were further corroborated by appellant's own admissions of the fact. Appellant has not shown that it is reasonably probable the verdict would have been different had the evidence concerning the first photographic lineup been disclosed earlier by the prosecution, nor does the prosecution's belated disclosure of that evidence undermine our confidence in the verdict. Accordingly, the court did not err in finding no *Brady* violation occurred.

We also reject appellant's contention that Officer Mantilla's destruction of the first photographic lineup viewed by Perez requires reversal because appellant has failed to

show that Officer Mantilla acted in bad faith. (See *Arizona v. Youngblood* (1988) 488 U.S. 51, 58 [unless criminal defendant can show bad faith on part of police, failure to preserve potentially useful evidence does not constitute denial of due process of law].) Officer Mantilla explained that he discarded the first photographic lineup after his investigation of the license plate owner featured in the lineup failed to yield any connection between that person and the instant crimes. We agree with the trial court's observation that "the better police practice should have been to preserve any photographs that were shown to any potential witnesses." However, there is nothing in the record indicating the photographic lineup was purposefully destroyed to prevent appellant from benefiting from any exculpatory value it might have. (See *People v. Webb* (1993) 6 Cal.4th 494, 519 [due process principles invoked by defendant are primarily intended to deter police from purposefully denying an accused the benefit of evidence in their possession and known to be exculpatory].) Accordingly, appellant has not shown bad faith on the part of Officer Mantilla.

IV. Cumulative Error

Appellant contends that the cumulative effect of the errors he has alleged on appeal warrant reversal. Having found no individual prejudicial error, we also conclude there is no cumulative prejudice. (*People v. Cook* (2006) 39 Cal.4th 566, 608.)

V. Sentencing Issue

Finally, appellant contends the trial court was without jurisdiction to increase his original sentence by eight months on its own motion because, to the extent the court erred when it originally imposed a concurrent two-year term, the error constituted judicial error in the pronouncement of judgment (as opposed to a clerical error) not subject to correction by the trial court. In addition, appellant asserts that the court essentially promised appellant a concurrent term in exchange for his plea in case No. 177315, and therefore equity requires that the judgment be amended to reflect the sentence originally

bargained for and imposed even though appellant raised no objection to the increased sentence.

We have carefully reviewed the record and agree with respondent that the court did not promise appellant a concurrent sentence in exchange for his plea. Rather, at the time of the plea, the court told appellant "the maximum punishment you could receive is an additional eight months *consecutive* to the other case." (Italics added.) What the court meant by its next statement ("That's not going to happen in this case") is unclear, but we find no basis for concluding that it contained an implicit promise to impose a concurrent term in exchange for the plea as appellant now urges on appeal. Further contradicting the notion that the court was making such a promise is the fact that defense counsel raised no objection at sentencing when the court initially indicated that appellant's total sentence was "going to be six years, eight months."

However, later during the sentencing hearing, after imposing a total term of six years in case No. 181559, the court stated, "In case 177315, as to Count 2, he is committed to state prison for two years …." After a discussion regarding custody credits, the court reiterated, "Back in case 177315, it's two years as to Count 2." Contrary to appellant's assertion, the reporter's transcript does *not* reflect that the court orally ordered the two-year sentence to run concurrently with his sentence in case No. 181559, although the minute order stated a concurrent term was imposed. At the hearing the next day, the court stated: "Well, it was supposed to be eight months consecutive, and I said two years concurrent, apparently." The court went on to express disbelief that it had said that, and added "I think really what happened is the court reporter got it wrong." Defense counsel jokingly responded, "I vote for the court reporter" and then raised no objection when the court thereafter ordered the record amended to reflect that appellant received a consecutive eight-month term, instead of the concurrent two-year term previously imposed.

Despite the parties' assertions, we do not agree that the circumstances here gave rise to either a judicial error in the pronouncement of judgment or a clerical error in the clerk's entry of the judgment in the minutes. Rather, the court's failure to indicate whether or not the two-year sentence it imposed in case No. 177315 was to run concurrently or consecutively with the six-year sentence imposed in case No. 181559 was more akin to a failure to pronounce sentence on a count. The failure to pronounce sentence on a count constitutes an unauthorized sentence subject to correction at any time. (See *People v. Irvin* (1991) 230 Cal.App.3d 180, 191.) It is clear from the record of sentencing that the court intended to impose, and the parties understood that appellant was to receive, a consecutive term of eight months for the count to which appellant pled no contest in case No. 177315. However, at the end of the original sentencing hearing, the court inexplicably committed appellant to prison on that count for two years without specifying how that sentence was to run with respect to the sentence imposed in case No. 181559. When the matter came on for hearing the next day, defense counsel specifically addressed the situation as "one case we missed sentencing on." Given the court's clear intention to impose a consecutive eight month sentence, its failure to make a complete pronouncement of sentence at the original sentencing hearing, and the absence of any objection to the court's subsequent amendment of the record to adjust appellant's sentence to reflect its true intention, we find that the court's action was a proper exercise of its authority to correct an unauthorized sentence.

DISPOSITION

The judgment is affirmed.

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HILL, J.

WE CONCUR:

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VARTABEDIAN, Acting P.J.

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WISEMAN, J.